

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA

Plaintiff

v.

CRIMINAL ACTION NO. 2:13-cr-34-5

ERIC SCOTT PENNINGTON,

Defendant.

ORDER/OPINION

On the 24th day of January, 2014, came the United States of America by Stephen D. Warner, Assistant United States Attorney, and also came the defendant, Eric Scott Pennington, in person, and by his counsel, L. Richard Walker, for a hearing on a Petition for Action on Conditions of Pretrial Release filed by Defendant's Adult Pretrial Services Officer on January 14, 2014.

Defendant was indicted by the grand jury on August 27, 2013 and appeared via summons for an initial appearance and arraignment before the undersigned on September 10, 2013. At that time, Defendant was released pursuant to an Order Setting Conditions of Release. On December 2, 2013, Defendant appeared before the undersigned and pled guilty to the possession of pseudoephedrine to be used in the manufacture of methamphetamine. On January 14, 2013, Defendant's Adult Pretrial Services Officer filed a Petition for Action on Conditions of Pretrial Release, alleging that Defendant violated the conditions upon which he was released on September 10, 2013.

Prior to the taking of evidence, Defendant, through counsel, admitted to the factual allegations contained in the Petition and conceded that he had violated the conditions of his

release. The Court advised Defendant of the effect of his admission, and, upon inquiry, determined his admission was made freely, knowingly, and voluntarily. Upon consideration of Defendant's admission, the Court concludes and finds by a preponderance of the evidence that Defendant violated the conditions of his pretrial, post-guilty plea release.

The Government filed a Motion to Detain, invoking mandatory detention pursuant to 18 U.S.C. § 3143(a)(2). Defendant, through counsel, orally moved for home detention, advising that his parents and grandparents were present in the courtroom, and that his mother was willing to have Defendant live in her home on home detention. Through counsel, he advised that he is currently receiving medical treatment following severe burns he recently sustained to his right arm. Defendant received a skin graft for his burns at the West Penn Burn Center in Pittsburgh, Pennsylvania. Defendant's counsel did indicate that the regional jail is providing medical treatment to Defendant for his condition.

Upon consideration of all which, the Court finds Defendant pled guilty to a crime which falls under 18 U.S.C. § 3142(f)(1)(C), and is awaiting sentencing. The undersigned therefore finds that 18 U.S.C. § 3143(a)(2) applies.

Accordingly, the United States' Motion for Detention is **GRANTED**, and Defendant's release is **REVOKED**. Defendant's oral motion for home detention is **DENIED**. Defendant is remanded to the custody of the United States Marshal Service pending further proceedings in this matter.

The Court notes that 18 U.S.C. § 3142(i) authorizes a judicial officer to "permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary . . . for [a] compelling reason." As indicated above, Defendant has primarily received treatment for his burns at the West Penn Burn Center in Pittsburgh, Pennsylvania. Accordingly, should Defendant

require medical treatment beyond that which he is receiving at the regional jail, the Court, upon notification from the parties, will consider a temporary furlough for the purpose of medical treatment should it be justified by Defendant's needs and circumstances.

Defendant is advised of his right to appeal this decision to Chief United States District Judge John Preston Bailey.

It is so **ORDERED**.

The Clerk shall direct copies of this order to counsel for the United States, to counsel for the defendant, to the United States Marshal, and to the United States Probation Officer.

DATED: January 24, 2014

s/ *John S. Kaul*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE